Editor's note: Reconsideration denied by order dated Aug. 11, 1980

JOHN D. AND ELIZABETH ARCHER

IBLA 79-218 Decided March 24, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, dismissing protest against assignment of phosphate leases I-012989 and I-013649.

Affirmed.

1. Mineral Leasing Act: Litigation -- Phosphate Leases and Permits: Generally

When an assignment of a phosphate lease has been approved and there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment where no error or irregularity is shown therein, and will maintain the status quo where the parties have instituted litigation to resolve their dispute.

APPEARANCES: Curt R. Thomsen, Esq., Holden, Kidwell, Hahn, and Crapo, Idaho Falls, Idaho, for appellant; Timothy A. Vanderver, Jr., Esq., Donald A. Lofty, Esq., Patton, Boggs, and Blow, Washington, D.C., for respondents Beker Industries and the Conda Partnership; Robert C. Berger, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from the January 9, 1979, dismissal by the Idaho State Office, Bureau of Land Management (BLM), of the Archers' (appellants) protest against the approval of partial assignment of the above phosphate leases. Appellants originally assigned the leases to Mountain Fuel Supply Company 1/ which in turn assigned them to Beker Industries Corporation (Beker). The leases were then partially

1/ Appellants reserved to themselves a royalty interest of 15 cents per ton of phosphate mined.

assigned from Beker to Western Co-operative Fertilizers (U.S.), Inc. (WCF), and subsequently by Beker and WCF to the Conda Partnership (respondent) in which Beker and WFC are general and sole partners.

The decision dismissing appellants' protest states in part as follows:

> The basis for the protest is that there is currently litigation pending in Caribou County, Idaho wherein Mr. and Mrs. Archer as plaintiffs are seeking judicial cancellation of their assignments of the noted leases to Mountain Fuel Supply and judicial cancellation of subsequent assignments from Mountain Fuel Supply Company to Beker Industries Corporation. [2/]
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> The protestants have requested that the Department of the Interior (Bureau of Land Management) take no action to approve or disapprove the assignments until a final resolution is made in the Caribou County lawsuit. Department of Interior decision A-30208 (Nov. 25, 1964) McCulloch Oil Corporation of California (and other decisions) was cited as Departmental precedence for taking no action pending a resolution of the dispute between the parties.
>
> We acknowledge that this has been the practice of the Department. However, it is our contention in this instance that approval of the assignments joining Western Co-operative Fertilizer (U.S.), Inc., with Beker Industries Corporation will not significantly effect [sic] the Archer lawsuit. In essence, the only effect of the assignment approvals will be to add Western Co-operative Fertilizer (U.S.), Inc., to the list of defendants. On the other hand, not to approve the assignments could and most probably would, adversely effect [sic] a financial arrangement between Beker, Western and Citibank Corporation that would be detrimental to the continuation of a phosphate mining and processing operation, the employees thereof, and the flow of royalty income to the United States Treasury, the State of Idaho and Caribou County.
>
> Further, the approval of the assignments of phosphate leases Idaho 012989 and 013649 is conditional on the results of the pending litigation. Should it be finally adjudged that the original assignment from Archers to Mountain Fuel Supply Company be set aside, then subsequent assignments would naturally fall. To wait an ultimate decision through the various courts could conceivably take

2/ The theory of appellants' State court suit is that Mountain Fuel Supply had breached covenants to mine and develop the leases.

> months or years. It is not, in our judgment, in the public interest or that of the United States Government, to not act on a legally filed assignment request. Our records show that Beker Industries Corporation is the record title holder of the two subject leases. Being such, they may, at their discretion, assign all or part of the leaseholds to qualified assignees. [Emphasis supplied.]
>
> Having found the assignee qualified to hold federal leases, the assignments have been approved effective January 1, 1979.

In their statement of reasons before this Board, appellants ask that "their claimed rights in the leases and the leases themselves be preserved until the [litigation in the Idaho Court] is finally concluded."

On May 2, 1979, the Sixth Judicial Court of Idaho rendered a summary judgment in favor of respondents herein. Respondents thereupon took the position that the Board should (1) dismiss the appeal without prejudice, or (2) refrain from further action until the Idaho litigation is concluded.

In a letter to the Board dated December 7, 1979, appellants confirmed that they had appealed the matter to the Idaho Supreme Court and indicated their continuing intention to pursue litigation in the courts of that State. Concurrently, they ask the Board to decide on the merits whether (1) BLM ignored Departmental policy in approving the assignments while on notice of state litigation, and (2) BLM fully considered the public interest in approving the assignments. Appellants allege that approval of the assignments unfairly burdened them in their state court litigation. They ask the Board to reverse the BLM decision, thus rescinding approval of the assignments, pending final resolution of the Idaho litigation. 3/ Appellants have requested an evidentiary hearing to fully explore BLM's considerations in dismissing their protest.

Respondents and BLM agree that the assignments were properly approved and ask that the decision dismissing the protest be sustained.

The Departmental policy claimed by appellants to have been ignored in the case at bar was stated as follows in McCulloch:

3/ Appellants envision a considerable period, perhaps years, of further litigation. In their December 7, 1979, letter to the Board they advise: "Mr. and Mrs. Archer would estimate that a decision by the Idaho Supreme Court will not be forthcoming for approximately 18 months. Should the Archers prevail on appeal, the matter will be remanded to the Caribou County District Court for trial. After trial, another appeal by either side is a very strong possibility."

> The Department has consistently held that it will not act on an assignment of an oil and gas lease submitted for approval when it has notice of a controversy between the parties as to the effect or validity of the assignment. John H. Corridon, A-27390 (February 18, 1957); Pine Valley Gas & Oil Co., A-28812 (September 11, 1962); see also L. N. Hagood et al., 62 I.D. 414 (1958); Richfield Oil Corporation, 65 I.D. 348 (1958); Anthony C. Vonderbecke et al., A-28073 (February 11, 1960). In cases where an assignment has been approved without notice of a controversy as to its effect or validity and the Department subsequently receives notice of a controversy, it has declined to disturb existing conditions or to approve any change without evidence of an agreement among the parties or a court decree on the matter in controversy. Newton Oil Company et al., A-27662 (December 17, 1958); Anthony C. Vonderbecke et al., supra; Tom Bolack, A-29223 (March 20, 1963).

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In McCulloch, McCulloch Oil Company sought recision of the approval of an assigned lease contending that the assignment became invalid for reasons occurring after execution of the assignment. Fully aware of the controversy between McCulloch and the assignee as to whether the latter was entitled to the assignment, the Department there denied recision, stating as follows:

> [T]here seems to be no necessity for departing from the practice of allowing matters to remain in status quo pending a resolution of the dispute between the parties. If McCulloch is ultimately successful, then will be time to rescind approval of the assignments. If [the other party] is successful, the approvals can be allowed to stand. An interim shifting of the position of the parties would not resolve the ultimate issue and, depending on the final outcome, may simply be an exercise in paper work.

[1] Departmental policy is to allow an approved assignment to stand, maintaining the status quo in order to allow the parties to resolve their disputes. Joseph Alstad, 19 IBLA 104 (1975), and cases there cited. In our view, that policy is espoused in BLM's January 9, 1979, decision. We must note again that that decision is expressly conditioned upon the outcome of the state court litigation and has no effect thereon. Appellants' interests are thus adequately protected and the allegations to the contrary are without basis in fact.

Appellants' second major challenge to the BLM decision -- that it contravenes the public interest -- is also devoid of substance. Inasmuch as the approval of the assignments would facilitate continued mining, the action is in the interest of the general public, which benefits through royalties to the United States. It is regionally and

locally in the interest of those segments of the public whose livelihood is dependent on continued mining. To rescind the approval of the assignments could adversely impact these interests without benefitting appellants.

Appellants have not challenged the approval of the assignment based on noncompliance with any regulations. The assignment documents, which constitute a major portion of the record, were duly reviewed by the Idaho State Office prior to its finding that respondents were qualified assignees. Appellants have made allegations that BLM's primary concern was to help respondents out of a financial predicament. We do not think the decision appealed from permits of such an interpretation nor is it supported by references to the record. Moreover, its relevance is unclear. Appellants have made numerous other allegations as to how they were harmed, burdened, or otherwise adversely affected by approval of the assignments. None of these allegations is linked to factual circumstances or solid evidence of record, and it does not appear that such facts could be developed if a hearing were held. The request for a hearing is therefore denied.

We conclude that BLM properly dismissed appellants' protest.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge